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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1989 of 2019

and

C.M.P.Nos.13443 & 15544 of 2019

1. Ammasi Kutti,
S/o.Angappa Gounder.

2. Smt.Kannammal,
W/o.Ammasai Kutti.

Both are residing at
No.1/34, Malayappalayam,
Olakoil Village, Gobichettipalayam Taluk,
Erode District.

... Appellants

Vs

1. S.Manoharan,
S/o.Suriyanarayanan,
No.1/9, Malayappalayam,
Olakoil Village,
Gobichettipalayam Taluk,
Erode District.

2. The District Registrar,
Tiruppur Registration District,
Tiruppur.

3. The Sub Registrar,
Kunnathur, Avinashi Taluk,
Tiruppur District.

4. Murugayammal,
W/o.Rasappa Gounder,
No.2/11, Pattampalayam,
Avinashi Taluk,
Tiruppur District.



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5. Komarayal,
W/o.Velusamy,
Olakoil Village,
Gobichettipalayam Taluk,
Erode District.
6. Marathal,
W/o.Palanisamy,
No.2/59, Komarapalayam,
Chockkanur Village,
Avinashi Taluk, Tiruppur District.
7. Lakshmi @ Vijayalakshmi,
W/o.Late.Ramasamy,
No.266, Rattaiyankurrai,
Andipalayam Village,
Gobichettipalayam,
Erode District.
8. P.R.Subramanian,
S/o.Late.Rasappa Gounder,
Sakkilan Thottam, Pattampalayam Village,
Tiruppur District.
9. P.S.Kandasamy,
S/o.P.R.Subramanian,
Sakkilan Thottam, Pattampalayam Village,
Tiruppur District.
10. Smt.Gowri,
W/o.Gurusamy,
Kattupalayam, Sokkanur Village,
Tiruppur District.
11. Baby @ Palaniammal,
W/o.Eswaramoorthy,
Valasupalayam,
Karunampathi Post 641666
Perumanallur Via, Avinashi Taluk,
Coimbatore District. ... Respondents

PRAYER :-

Appeal against the order passed in W.P.No.2230/2016 dated 29.03.2019.

PRAYER in W.P.No.2230/2016 :-

Writ Petition filed under Article 226 of the constitution of India praying for a writ of certiorarified mandamus calling for



the records of the first respondent in his proceeding S.No.6276/A1/2015, Dated 01/12/2015 and to quash the same with a direction directing the second respondent here in to register the sale deed dated 27/10/2015 executed by the respondents 3 to 6 here in Favour of the Petitioner.

For Appellant : Mr.S.Parathasarathy

For Respondents : Mr.A.K.Kumarasamy
Senior Counsel
for Mr.S.Kaithamalai Kumaran (for R1)

Mr.T.M.Pappiah (for R2 & R3)
Special Government Pleader

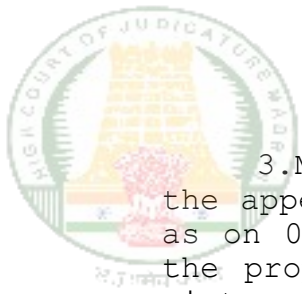
Mr.P.Parthikannan (for R6 & R7)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the appellants who got the sale registered in their favour on 04.07.2002, purchasing the entire extent of land comprised in old Survey No.167 and 169 and new Survey No.294/4, 295/5, 295/6 to an extent of 1.50 acres located in Olalakoil Kovil Village, Gobichettipalayam Taluk, Erode District from one Mr.P.R.Subramaniyan, S/o.Rasappa Gounder. The property originally belonged to Mr.Rasappa Gounder and he died interstate on 04.09.2001, leaving behind Mr.P.R.Subramanian/8th respondent, Ms.Komarayal/5th respondent, Ms.Marathal/6th respondent & Lakshmi @ Vijayalakshmi/7th respondent.

2.When things stand so, the widow/4th respondent and daughters/respondents 5, 6 & 7 executed a sale deed on 27.10.2015 in favour of the 1st respondent/writ petitioner. When the sale deed was presented for registration before the official respondents, the 3rd respondent refused to register the sale deed by issuing memo dated 09.11.2015. The said order was challenged before the 2nd respondent/District Registrar who by way of an order dated 01.12.2015 rejected the appeal on the ground that Mr.P.R.Subramaniyan, already sold the entire extent of property to the appellants and therefore, the document cannot be registered. The said order was challenged before the learned single Judge. On contest, the learned single Judge allowed the Writ Petition, holding that the Registering Authorities has got no power and passed a cryptic order. The said order is being challenged before this Court.



3.Mr.S.Parthasarathy, learned counsel appearing on behalf of the appellant submit that he has purchased the property as early as on 04.07.2002 and he has been in possession and enjoyment of the property. Having known all these facts, the widow and the sisters kept quiet for more than 13 years and subsequently, attempted to sell away the property to the 1st respondent/original writ petitioner and that was rightly prevented by the 2nd and 3rd respondent by refusing to register the said document.

4.However, Mr.A.K.Kumarasamy, learned senior counsel appearing for the 1st respondent would submit that the registration authorities has got no power to make enquiry with regard to the title of the property and they cannot refuse the registration on the ground that the property was already conveyed or sold. He would rely upon the Rule 55 of the Tamil Nadu Registration Rules to contend that the scope of enquiry to be conducted by the registering authority is only confined to five grounds which have been enumerated therein and beyond that the registration authority has got no power to refuse the registration on the ground that the property was already sold or there is no title to the executants. He also relied upon two judgments of the learned single Judges of this Court in W.P. (MD).No.14610 of 2014 dated 27.06.2014 and W.P.(MD).No.11426 of 2018 dated 02.07.2018. In those cases, when similar issue were raised, the learned Judges quashed the orders and directed the registration authorities to register the documents.

5.Mr.T.M.Pappaiah, leaned Special Government Pleader would submit that only to prevent the fraudulent deeds especially, sale deeds being executed by strangers to knock away the property of innocent owners, a circular has been issued by the Inspector General of Registration on 25.04.2012, directing the registering authorities to conduct enquiry before the registration by calling upon the parties to produce the original deeds in respect of which is sought to be registered. He also relied upon the Division Bench judgment of this Court in W.A.No.229 of 2018 dated 17.07.2019 in P.Rukumani and 4 others Vs. Amuthavalli and 5 others in which the Division Bench of this Court categorically held that if there is any disputes about the rights of the parties involved, the only appropriate remedy for the parties is to approach the civil Court by way of civil suit. By relying upon the said judgment, he has justified not only the circular issued by the Inspector General of Registration but also justified the action of the respondent. He would further submit that the intention of the Government is to prevent the fraudulent transactions and safeguard the rights of the owners of the property.

6.Mr.A.K.Kumarasamy, learned senior counsel would submit that registration is necessary even though he has to work out



his remedy before the civil Court. He would submit that already a sale consideration was paid to R4 to R7 and therefore, the 1st respondent has already become the owner of the property. When the 1st respondent has already become the owner of the property, he has got a right to register the sale deed. Moreover, he would submit that when he has already paid the sale consideration his right has to be protected.

7.This Court is aware of very many fraudulent deeds, especially sale deeds being registered and knocking away the property of innocent owners behind their back, in view of the sky rocketing of real estate prices. Many offences are being committed day in and day out involving the properties and that is the reason why the Tamil Nadu Government has constituted Special Court for land grabbing cases and formed a Special team for land grabbing Cell. Though the said constitution has been struck down by this Court, the matter has been still pending before the Hon'ble Supreme Court. The Government took note of all these developments and only thereafter, the land grabbing special Cell has been formed as huge amount of time is taken to decide the matter before the civil Court and only pursuant to the same, the circular dated 25.04.2012 has been issued by the Inspector General of Registration. Paragraph 3 of the said circular is extracted as follows:

"However, it is brought to my knowledge that documents are being registered without proper verification of title deeds and other original relevant documents which leads to fraudulent registration"

8.Only to safeguard the public interest and to prevent bogus or fraudulent registration of the documents, the following instructions have been given by the authorities:

"(A) In respect of deeds involving transfer of immovable property, such as sale, gift, settlement, exchange or creating charge over the property such as Mortgage or Power of Attorney, the registering officer should insist presentation of previous original deed/deeds by which the executants acquired right over the said property before registering the document and then verify the previous documents to satisfy himself that the executants have right over the property.

(B) In case previous document are not available as the property may be ancestral, the executants should produce revenue records such as Patta copy issued by the Revenue Department and tax receipt in original along with attested/notarized Xerox copies to prove that the properties are owned by them. The Registering Officer should verify the original and return them to the party concerned and preserve the



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attested Xerox copy as part of the document by scanning and numbering it.

(C) In case the previous original document is lost, the party should produce certified copy of the document, copy of complaints recorded in Police Station and copy of advertisement published in local dailies regarding loss of documents. In such case, the party has to produce Patta/property tax receipt in original.

(i) In case if the property is Government land/poramboke land or belonging to religious institution as per revenue records/other records and the party has not produce any patta to prove his right the Registering officer should return the document with check slip stating the facts.

(ii) In the above mentioned case if the party produces patta, then the Registering Officer should keep the document pending for ascertaining the facts and genuineness of patta from concerned department/revenue officials.

(iii) In case of cancellation of settlement deed if the settlor is unable to produce the original settlement deed as it may be with settlee then the settlor should produce certified copy of the settlement deed. The Registering Officer, after verifying the certified copy for identity, then register the cancellation deed without insisting for original deed."

9. One of the instructions given by the Inspector General of Registration is directing the registration authorities to insist on presentation of the previous original deeds/sale deeds by which the executant acquired right over the property before registering the document. If anybody intends to purchase the property definitely he/she/they should verify whether the person has got a right over the property and has got title by having registered documents in his/her/their favour. If the purchaser is not interested for various other reasons to verify the original documents that is the vendors, the registering authorities has got every right to insist upon the executant to produce the previous original deeds through which he acquired the property. The intention is only to prevent the bogus sale deeds being registered and to safe guard the public interest viz., the rights of the property owners. The bonafide intention in issuing the circular dated 25.04.2012 should be appreciated as it has been done only in the public interest.

10. Following the said circular only, 2nd and 3rd respondents registering authorities refused to register the document



presented by the 1st respondent having been executed by respondents 4 to 7. The authorities took note of the fact that the property was already sold by the son of Mr.Rasappa Gounder/8th respondent to the appellants as early as on 2002. There is no document produced before this Court to show that neither the 1st respondent nor the respondents 4 to 7 have been enjoying the property right from the date of death of Mr.Rasappa Gounder as early as on 14.09.2001. From the year 2002 onwards the appellants are in possession of the property and have been enjoying for more than 12 years. By that time they would have perpetrated the title by way of adverse possession.

11.Having slept over the matter like a Rip van winckle, the respondents 4 to 7 suddenly woke up from their deep slumber and tried to execute the sale deed in favour of the 1st respondent, alleging certain right over the property and claiming that the entire property was fraudulently sold by the 8th respondent to the appellants. The only proper remedy in this case of defrauding or selling away the property or the share of the respondents 4 to 7 stealthily, the appropriate remedy is only to go for cancellation of sale deed executed by the 8th respondent in favour of the appellants or to go for partition. The said remedy is only available to respondents 4 to 7 and not to the 1st respondent who is the stranger to the property, even though he is said to have invested his money. If he has invested the money in the property, it is his own invitation as he has not acted as a prudent purchaser. He has not verified the original title deed or Encumbrance Certificate of the properties which is sought to be purchased by him. That itself would go to show that he is not a bonafide purchaser and he is only interested in purchasing the litigation for which he has to be blamed.

12.The Division Bench of this Court rightly held that Article 226 cannot be invoked when the civil rights of the parties over the property have to be decided and the proper course is only go before the civil court. This Court respectfully admits the said reasoning given by the Division Bench of this Court.

13.The memo issued by the 2nd respondent refusing the registration of the document produced by the appellant/1st respondent on the ground that the property was already sold may not be in correct position. What should have been done by the 2nd respondent is to refuse the registration on the ground that the original title deeds were not produced. In any event, the rejection is rightly done, but on a wrong reasoning and therefore, this Court approves the rejection and deems it as if



it has been rejected for non production of original title deed by the executants at the time of registration of the property.

14.No doubt, Rule 55 contemplates only a few existencies. Rule 55 is extracted as follows.

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"55.It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but, he is bound to consider objections raised on any of the grounds stated below:-

(a)that the parties appearing or about to appear before him are not the person they profess to be;

(b)that the document is forged;

(c)that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d)that the executing party is not really dead, as alleged by the party applying for registration; or

(e)that the executing party is a minor or an idiot or a lunatic"

15.Whether this Court can be a generator of litigation, especially when fraudulent transactions are getting a legal colour by passing orders? If a document is sought to be registered without production of the original title deeds, definitely it will lead to registration of FIR by invoking criminal jurisdiction and multiplicity of proceedings before the civil Courts. The aim of the Court is only to see that the litigations are prevented and the property owners are not unnecessarily harassed and that is the exact reason behind the issuance of circular dated 25.04.2012 by the Inspector General of Registration in the State of the Tamil Nadu. The said circular was necessarily issued by taking note the following number of cases fraudulently registered:



ANNEXURE - I

U Section pending cases as on 20/10/2017 Under Circular 67
Based on IGR Order No. C.No.52338/C1/2011 Circular 67 dated
03.11.2011

S.No.	Zone	Petitions Receivied	Enquiry Conducted & Orders passed	Pending Cases	Petitions Rejected
1	Salem	1055	671	0	384
2	Cuddalore	588	518	0	70
3	Coimbatore	630	481	3	146
4	Madurai	2696	892	44	1760
5	Vellore	499	256	0	243
6	Thanjavur	334	127	96	237
7	Chennai	3923	913	2839	171
8	Tirunelveli	1669	1215	454	1072
9	Trichy	1445	333	10	1102
	TOTAL	12839	5406	3446	5185

ANNEXURE - II

U Section Particulars under Circular 68 (2) order passed from
21.10.2017 to 16.09.2019
Based on IGR Order No. C.No.41530/U1/2017 Dated 08/11/2011

S.No.	Zone	Petitions Receivied	Enquiry Conducted & Orders passed	Pending Cases	Petitions Rejected
1	Salem	705	246	459	0
2	Cuddalore	279	221	52	6
3	Coimbatore	268	209	58	1
4	Madurai	1042	731	165	156
5	Vellore	322	244	35	43
6	Thanjavur	238	104	134	9
7	Chennai	2107	436	1629	42
8	Tirunelveli	622	228	394	174
9	Trichy	599	198	333	69
	TOTAL	6182	2617	3259	500



16. After coming to know about the number of fraudulent deeds being registered, artificially creating encumbrance over the properties of third parties by land sharks or land grabbers, the circular dated 25.04.2012 was rightly issued and therefore, the circular dated 25.04.2012 is being upheld by this Court as it is only prevent the registration of bogus documents and also to safeguard the interest of the public and their properties.

17. No doubt, the circular dated 25.04.2012 is in the nature of executive instruction which needs to be incorporated in Rules. It is expected that the Government would incorporate the circular dated 25.04.2012 in the Registration Rules by way of an amendment, so that the circular would get a statutory backing and on a later date, it would not be found fault with.

18. Therefore, the State Government is to frame appropriate Rules incorporating the circular dated 25.04.2012 within a period of six (6) months from the date of receipt of a copy of this order and file a compliance report before this Court.

19. The only remedy open to the 1st respondent either to request the vendors viz., R4 to R7 to approach the civil Court either for cancellation of sale deed dated 04.07.2002 or for partition of the property making all the necessary parties as defendants in the Suit or by filing a civil suit for recovery of money which he is said to have paid to R4 to R7. While defending the case, the appellants have got every right to defend by pleading adverse possession and also limitation. Therefore, the order passed by the learned single Judge is liable to be set aside and the memo refusing to register the sale deed in favour of the 1st respondent dated 09.11.2015 is upheld for the reason that the executants of the sale deed in favour of the 1st respondent has not produced the parent title deed, as confirmed by the 2nd respondent by order dated 01.12.2015.

20. Accordingly, the Appeal is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

For reporting compliance, call the matter after six months.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The District Registrar,
Tiruppur Registration District,
Tiruppur.

2. The Sub Registrar,
Kunnathur, Avinashi Taluk,
Tiruppur District.

copy to :-

The Section officer,
Judicial section, High Court, Madras.

+1cc to Mr.S. Parthasarathy, Advocate, S.R.No.27010

+1cc to Mr.S. Kaithamalai kumaran, Advocate, S.R.No.26837

W.A.No.1989 of 2019

LN(CO)
CT(14/07/2021)